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Court sides with EPA on power plant

By ADELLA HARDING - Staff Writer

ELKO - A federal appeals court has upheld the U.S. Environmental Protection Agency's decision to split an "airshed," which eliminates another hurdle for Newmont Mining Corp. to build a power plant in Boulder Valley.

The U.S. Court of Appeals for the Ninth Circuit disagreed with Great Basin Mine Watch's contention that EPA violated the Clean Air Act in dividing the air pollution monitoring area.

The environmental organization contended EPA failed to consider Barrick Goldstrike Mines Inc. as a major polluter in the area 61 airshed when agreeing to the split.

"Basically, it was a ruling that EPA didn't break the law in dividing up area 61," Roger Flynn of the Denver-based Western Mining Action Project said today. He was the lawyer in the case for Great Basin Mine Watch, a Reno-based environmental organization. "We're still looking at the opinion," he said.

The next step would be the U.S. Supreme Court, if Great Basin Mine Watch and Western Mining Action Project decide to challenge the appeals court opinion.

Both Newmont and Barrick operate on the Carlin Trend, and the power plant would be located on Newmont's TS Ranch to the west.

Gov. Kenny Guinn urged EPA to split the airshed to allow Newmont to build a power plant, and the Nevada Division of Environmental Protection worked with EPA on the change.

"We're pleased with the court's decision to uphold the state's regulatory oversight of air quality and enforcement of the U.S. EPA Clean Air Act," said NDEP Administrator Leo Drozdoff.

The state and Newmont intervened in the appeal, and Deputy Attorney General Bill Frey said today he was excited about the ruling.

"I think it's great. This resolves the issue of dividing one of Nevada's air quality areas ... to protect the clean air and allow for reasonable economic development," Frey said.

The appeals court denied Great Basin Mine Watch's petition for review, with Circuit Judge William Canby writing the opinion that "EPA did not act arbitrarily or exceed its authority in granting Nevada's request."



Canby said the court determined Barrick didn't trigger the Clean Air Act's prevention of significant deterioration of air quality restrictions so EPA was in the right to grant Nevada's request to split the airshed.

Newmont needed the airshed split so that the air quality standards for the power plant wouldn't be lumped with those for the mining operations, which would kick the restrictions to a higher level.

"We're very pleased with the U.S. Court of Appeals for the Ninth Circuit's denial of the petition. The court supports the prior decisions of the EPA and the state," Newmont's manager of external affairs for Nevada operations, Mary Korpi, said today.

She said Newmont is still pursuing construction of the planned 203-megawatt TS Power Plant, with a couple of state permits still pending. Construction could begin this summer.

"The permits are a critical factor," Korpi said.

The opinion doesn't mentioned the planned power plant, and Flynn said the plant didn't come up in oral arguments last November, either.

"It was a question of law," he said.

According to the court's opinion, a central issue of the appeal was whether stricter air quality restrictions already were "triggered or must be considered triggered" by Goldstrike actions.

"It is important for our purposes to note that application for a permit is the trigger, not simply the existence of substantial pollution emissions," the court wrote.

According to the opinion, EPA acknowledged Goldstrike was a major pollution source for particulate matter, nitrogen oxide and sulfur dioxide but there hadn't been a triggering event.

Frey said Barrick has the necessary air quality permits, but permits for modifications were approved separately and at different times.

The airshed in question, called area 61, covers 550 square miles, and EPA approved splitting it into an upper and lower area 61. Frey said the northern area has 150 acres and the southern area has 400 acres with the split.

Great Basin Mine Watch also has an appeal pending before the federal court in San Francisco against U.S. Bureau of Land Management over BLM decisions allowing Newmont's Gold Quarry expansion and new Leeville underground mine, both on the Carlin Trend.

Flynn said this appeal is still awaiting oral arguments. The appeal claims BLM should be taking a broader view of a company's mining projects, "instead of piecemeal."

BLM issued separate environmental impact statements and approval decisions on Leeville and Gold



Quarry.

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